

Office of Hearings and Appeals Program Direction

Mission Supporting Goals & Objectives

The Office of Hearings and Appeals (OHA) conducts all of the Department of Energy's adjudicative process and provides various administrative remedies. OHA holds evidentiary hearings in cases involving the eligibility of employees to hold security clearances and "whistleblower" complaints involving any of the Department's 120,000 contractor employees. OHA also considers appeals of adverse determinations concerning requests for information under the Freedom of Information and Privacy Acts, and issues determinations involving requests for exception based upon claims of hardship or inequity resulting from the application of any DOE order, rule, regulation or other requirement. Other responsibilities include considering appeals of determinations by the Office of Civilian Radioactive Waste Management of payments-equal-to-taxes for eligible jurisdictions, and of determinations by the Office of Environmental Management concerning contributions to, and reimbursements from, the Uranium Enrichment Decontamination and Decommissioning Fund. OHA continues to be assigned further responsibilities.

OHA's goal is to promote successful and uninterrupted DOE operations through the deliberate, expeditious and equitable resolution of all claims of adverse impact emanating from the operations of the Department. In pursuing this objective, OHA issues timely, high quality, articulate decisions that consider and balance the Congressionally mandated objectives underlying each proceeding, the rights and interests of individual litigants, and the interests of customers, stakeholders and other concerned parties such as the public, state and federal governments. In cases involving access to classified information and other secure materials, for example, the employment interests of individuals are weighed against the national interest in restricting access only to trustworthy employees. Where "whistleblower" complaints are concerned, the interests of the Department lie in promoting an atmosphere in which employees may raise concerns about fraud, waste, abuse, safety and health without fear of retaliation while ensuring that DOE's contractors may manage their operations in the manner they believe is most efficient. All funding for OHA is for Program Direction, which provides the federal staffing resources and associated costs required to carry out its mission.

Performance Measures

Some specific measures of performance are:

- # The quality of OHA decisions as measured by the record of being upheld upon appeal and review of feedback received from the courts and OHA customers and stakeholders.
- # The number of decisions issued. The number of cases decided does not alone reflect the accomplishments of OHA. While some cases are relatively straightforward and can be resolved in a few days, others consume hundreds of hours of high-level professional time. For example, many whistleblower cases consume several months, involving multiple pre-hearing conferences, lengthy

evidentiary hearings with many witnesses, the review of hundreds of pages of documents, and the drafting of a detailed and lengthy decision.

- # Meeting time deadlines. OHA continuously monitors the status of each case pending before the office to determine whether resolution of the matter is proceeding on schedule and whether deadlines are being met.
- # Responsiveness to customer needs, as measured by feedback received.

Significant Accomplishments and Program Shifts

- # As a result of the Secretary's Openness Initiative, all contractor employee whistleblower cases previously under the jurisdiction of other headquarters offices — principally the Office of the Inspector General — will become the responsibility of OHA. This includes a backlog of over 50 open case investigations and the hearings that will follow the completion of these investigations. Whistleblower proceedings are (with the exception of a few isolated matters) the most labor intensive of OHA's activities. The amendments to the regulations will shift nearly all responsibilities under the whistleblower program from the Office of the Inspector General (IG) to OHA. As a result, OHA will take on the added responsibility for conducting investigations of whistleblower complaints and will issue all initial agency decisions. OHA estimates that these new responsibilities will increase its workload by 35 percent.
- # Once the transfer of the whistleblower function to OHA is completed, the Office of Inspector General will transfer to OHA some of the funding necessary to perform that work. In addition, to maintain its *current* level of activities, OHA will receive funding from other program offices for which OHA provides adjudicative services.
- # OHA was delegated the responsibility of conducting investigations of three EEO complaints involving the Office of Civil Rights (which normally investigates EEO complaints but could not do so in these cases because of the possible conflict of interest). OHA successfully completed each investigation and issued a detailed report within the applicable regulatory deadline.

Funding Schedule

(dollars in thousands)

	FY 1998	FY 1999	FY 2000	\$ Change	% Change
Salaries and Benefits	1,725	1,805	2,375	+570	+31.6%
Travel	35	60	80	+20	+33.3%
Support Services	30	30	20	-10	-33.3%
Other Related Expenses	510	505	525	+20	+4.0%
Total	2,300	2,400	3,000	+600	+25.0%
Full Time Equivalents	21	21	25	+4	+19.0%

Detailed Program Justification

(dollars in thousands)

FY 1998	FY 1999	FY 2000
---------	---------	---------

Salaries and Benefits

Compensation for civilian employees, including performance awards. With this funding:

# OHA resolved 203 cases in FY 1998, and expects to resolve about 240 cases in FY 1999 and 250 cases in FY 2000. OHA issues high-quality decisions and has had, and projects that it will continue to have, a singularly successful record of having virtually all of its decisions upheld on judicial review.			
# In cases in which there is a statutory or regulatory deadline, OHA will meet that deadline virtually without exception. Freedom of Information Act appeals are, for example, resolved within the 20-day statutory deadline.			
# As required by the Congress in amendments to the Freedom of Information Act, OHA will make its decisions available on its Internet web site (generally on the day they are issued) where they are easily available to all interested persons.			
# OHA will utilize alternative dispute resolution methods where they can be more efficient or of benefit to the parties. For example, OHA mediated a recent dispute between the Energy Information Administration (EIA) and an electric utility concerning whether EIA could continue to make public certain information provided by the utility. OHA considered the public interest in release of the data against the utility's need to respond to an increasingly competitive market for electricity. Instead of ruling strictly on the legal merits of the matter — and possibly generating a large number of similar cases — OHA facilitated an agreement between the utility and EIA on the releasability of the information pending public hearings and further review of the issue by EIA. As a result, EIA is now modifying its approach and is coordinating its policy regarding confidentiality with that of other government agencies such as the Federal Energy Regulatory Commission	1,725	1,805	2,375

Travel

For transportation to DOE field sites to conduct hearings and whistleblower investigations	35	60	80
--	----	----	----

(dollars in thousands)

FY 1998	FY 1999	FY 2000
---------	---------	---------

Support Services

Funding for computer support of the office information system and for assistance in maintaining OHA's Home Page on the Internet for the benefit of the public

30 30 20

Other Related Expenses

These include funding for employee training, charges by the Working Capital Fund for base services: rent, utilities, telephone, supplies, postage, building operations, photocopies, telecommunications, printing (including publication of federal register notices, and printing of decisions), and Automated Office Support System support and maintenance. OHA also pays certain services directly, including timesharing (Westlaw) and purchase of computer equipment and software

510 505 525

Total, Program Direction

2,300 2,400 3,000

Explanation of Funding Changes from FY 1999 to FY 2000

FY 2000 vs. FY 1999 (\$000)

Salaries and Benefits

Increase in salaries and benefits is due to general pay increases, promotions and within grade increases and an increase of four FTEs associated with a portion of the increased responsibilities OHA will receive pursuant to pending amendments to the DOE's Contractor Employee Protection (Whistleblower) Program. The amendments to the regulations will shift all responsibilities under the whistleblower program from the Office of the Inspector General (IG) to OHA. OHA will take on the added responsibility for conducting investigations of whistleblower complaints and will issue all initial agency decisions

+570

Travel

Increase reflects increased travel to DOE field sites to conduct investigations and hearings consistent with OHA's new responsibilities for DOE's Contractor Employee Protection (Whistleblower) Program

+20

FY 2000 vs. FY 1999 (\$000)

Support Services

Decrease in support services is due to reduced use of contractor -10

Other Related Expenses

Increase in other related expenses is due to increased Whistleblower work and an increase for the Working Capital Fund due to primarily to projected increases in rent 20

Total Funding Change, Office of Hearings and Appeals Program Direction +600

Support Services

(dollars in thousands)

	FY 1998	FY 1999	FY 2000	\$ Change	% Change
Management Support Services					
ADP Support	30	30	20	-10	-33.3%
Total Support Services	30	30	20	-10	-33.3%

Other Related Expenses

(dollars in thousands)

	FY 1998	FY 1999	FY 2000	\$ Change	% Change
Working Capital Fund	480	480	490	+10	+2.1%
Training	1	5	7	+2	+40.0%
Other	29	20	28	+8	+40.0%
Total, Other Related Expenses	510	505	525	+20	+4.0%